

APPEAL NO. 040770
FILED MAY 24, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 25, 2004. The hearing officer resolved the disputed issues by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the seventh and eighth quarters. The claimant appealed, essentially on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

On appeal, the claimant asserts that the hearing officer failed to list all of the claimant's evidence in the decision and order for "[a]ppeal and record purposes." The claimant does not expand upon this apparent objection, nor does he specify any relief requested as a result of this asserted error. We note that hearing officers have recently been directed by the Texas Workers' Compensation Commission to cease listing the documentary evidence admitted by the parties at CCHs in an effort to streamline the decisions. Absent a showing of how this omission resulted in error, or prejudiced the claimant, we find no error.

Section 408.142(a) provides that an employee is entitled to SIBs if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with his ability to work.

At issue in this case is whether the claimant satisfied the good faith criteria for SIBs entitlement. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), relied upon by the claimant in this case, states that the "good faith" criterion will be met if the employee:

has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

Alternatively, Rule 130.102(d)(5), which was also relied upon by the claimant for SIBs entitlement, provides that the good faith requirement may be satisfied if the claimant "has provided sufficient documentation as described in subsection (e)." Rule 130.102(e) states that "an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts." The rule then lists information to be considered in determining whether the

injured employee has made a good faith effort, including, among other things, the number of jobs applied for, applications which document the job search, the amount of time spent in attempting to find employment, and any job search plan.

Whether the claimant satisfied the good faith requirements of either Rule 130.102(d)(4) or Rule 130.102(d)(5) was a factual question for the hearing officer to resolve. Under cross-examination, the claimant testified that he believed that he could have done some kind of work during the relevant time period as long as he followed his restrictions. The hearing officer found that the claimant failed to provide a sufficient narrative report from a doctor which specifically explained how his compensable injury caused a total inability to work during the relevant time periods; that the claimant failed to prove that he had no ability to work during the qualifying periods in question; that the claimant failed to document a job search during each week of the seventh and eighth quarter qualifying periods; that the claimant did not conduct a well-structured job search during the relevant qualifying periods; and that the claimant failed to make a good faith effort to obtain employment commensurate with his ability to work during the relevant qualifying periods. The hearing officer concluded that the claimant was not entitled to SIBs for the seventh and eighth quarters. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Daniel R. Barry
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge